

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2021-361-G

JUNE __, 2022

IN RE:)
) **PROPOSED ORDER**
Dominion Energy South Carolina, Inc.’s) **APPROVING DESC’S APPLICATION**
Request for Approval of New Natural Gas) **FOR APPROVAL OF NEW NATURAL**
Energy Efficiency Programs) **GAS ENERGY EFFICIENCY**
) **PROGRAMS**
)
)
)

This matter comes before the Public Service Commission of South Carolina (“Commission”) on Dominion Energy South Carolina, Inc.’s (“DESC” or “Company”) application for approval of new natural gas energy efficiency programs under the authority set forth in S.C. Code Ann. § 58-37-20 and notice of intent to recover net lost revenues through the annual Natural Gas Rate Stabilization Act (“RSA”) proceeding under S.C. Code Ann. § 58-5-400 *et seq.* In accordance with S.C. Code Ann. § 58-3-250, the Commission enters this order granting DESC’s application.

I. PROCEDURAL BACKGROUND

DESC filed its application on November 23, 2021. On December 20, 2021, the Commission issued a Notice of Filing and Public Hearing outlining the nature of the proceeding and deadlines. The Commission directed DESC to publish the notice in newspapers of general circulation by January 11, 2022, and to provide the same to its customers via bill inserts or electronic mail by February 11, 2022. DESC complied with the Commission’s directives, as

reflected in the affidavit of publication filed on January 22, 2022, and the affidavit of Allen W. Rooks filed on February 15, 2022.

The South Carolina Office of Regulatory Staff (“ORS”) is a party to this matter pursuant to S.C. Code Ann. § 58-4-10 and made an appearance through counsel on December 14, 2021. The South Carolina Department of Consumer Affairs (“DCA”), South Carolina Coastal Conservation League (“CCL”), and Southern Alliance for Clean Energy (“SACE”) filed timely petitions to intervene. The Chief Hearing Officer granted the petitions by directives dated February 7, 2022, and March 15, 2022.

On March 21, 2022, in accordance with S.C. Code Ann. Regs. 103-845(C), DESC prefiled the direct testimonies and exhibits of Sheryl K. Shelton, Jatón R. Smith, and James Herndon. On April 4, 2022, the DCA, ORS, and CCL/SACE prefiled the direct testimonies and exhibits of their witnesses—David Dismukes, O’Neil O. Morgan, and Jim Grevatt, respectively. Rebuttal testimonies of Witnesses Shelton, Smith, and Herndon followed on April 11, 2022. On April 18, 2022, Witnesses Grevatt and Dismukes filed surrebuttal testimonies. The DCA filed corrected prefiled direct testimony of Witness Dismukes, along with a corrected exhibit, on May 3, 2022. On May 6, 2022, DESC filed a corrected exhibit attached to Witness Smith’s prefiled direct testimony. DESC also filed corrected prefiled direct testimony of Witness Shelton.

On May 2, 2022, the Commission convened a hearing on DESC’s application, with the Honorable Justin T. Williams presiding. The parties’ representatives, DESC’s witnesses, and ORS’s witness were present in the hearing room. CCL/SACE’s witness and DCA’s witness appeared virtually from remote locations. At the hearing, DESC was represented by Michael J. Anzelmo, Esquire, Jason A. Richardson, Esquire, K. Chad Burgess, Esquire, and Matthew W. Gissendanner, Esquire. ORS was represented by Christopher Huber, Esquire and Nicole Hair,

Esquire. Roger Hall, Esquire and Connor Parker, Esquire represented the DCA, and Kate L. Mixson, Esquire and Emma Clancy, Esquire represented CCL/SACE.

During the hearing and in accordance with S.C. Code Regs. Ann. 103-842(B) and 103-845(C), the Commission admitted the prefiled direct and rebuttal testimonies of DESC’s witnesses, Smith and Herndon, and the corrected direct testimony and rebuttal testimony of Witness Shelton. Witnesses Shelton, Herndon, and Smith appeared and testified as a panel. The Commission also admitted the prefiled testimony of CCL/SACE’s witness, Grevatt, the verified and corrected prefiled testimony of DCA’s witness, Dismukes, and the prefiled testimony of ORS’s witness, Morgan. Seven hearing exhibits were admitted into evidence without objection—Hearing Exhibit No. 1 (SKS-1), Composite Hearing Exhibit No. 2 (JH-1, Appendix A and JH-2, Appendix B), Hearing Exhibit No. 3 (JRS-1, as corrected on the record), Hearing Exhibit No. 4 (CCL/SACE Herndon Cross Ex. 1), Composite Hearing Exhibit No. 5 (JG-1 to J-G5), Composite Hearing Exhibit No. 6 (DED-1 and Appendix A), and Hearing Exhibit No. 7 (OOM-1).

II. APPLICABLE STATUTE

DESC filed its application seeking approval of new natural gas energy efficiency programs in accordance with S.C. Code Ann. § 58-37-20. The statute authorizes the Commission “to adopt procedures that encourage . . . public utilities providing gas services subject to the jurisdiction of the commission to invest in cost-effective energy efficient technologies and energy conservation programs.” S.C. Code Ann. § 58-37-20.

The statute further provides that if the Commission chooses to adopt such procedures, it must:

- (1) provide incentives and cost recovery for energy suppliers and distributors investing in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or demand;
- (2) allow energy suppliers and distributors to recover costs and obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities; and
- (3) establish rates and charges that ensure that the net income of an electrical or gas utility after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented.

Id.

III. REVIEW OF EVIDENCE, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

In the application, DESC outlined the process it followed to develop a new natural gas demand side management (“DSM”) program for its natural gas customers, requested approval of four new gas DSM programs, requested authorization of a gas DSM rider, and asked for approval from the Commission to modify, expand, amend, or add additional measures or programs without having to seek prior Commission approval. DESC also informed the Commission of its intent to address recovery of net lost revenues through the annual RSA proceeding. S.C. Code Ann. § 58-5-400, *et seq.*

The Commission heard testimony and received written evidence regarding the development of DESC’s proposed gas DSM programs, the specifics of the proposed programs, and the components of the gas DSM rider. After considering and evaluating the evidence and

testimonies of the witnesses outlined below, the Commission reaches the following factual and legal conclusions:

A. Development and Specifics of DESC's Gas DSM Programs

1. DESC Testimony

Witnesses Shelton and Herndon testified to the development of the gas DSM programs. Witness Shelton explained that in the Spring of 2021, DESC began exploring an expansion of its suite of DSM programs to include its natural gas customers for the first time. Tr. p. 16.4:16–16.5:5. As part of the development process, DESC collaborated with its Dominion Energy, Inc. counterparts in other jurisdictions on their gas-specific DSM offerings and enlisted the services of Resource Innovations, Inc. to formally develop new gas DSM offerings. Tr. p. 16.4:16–23. The collaboration between DESC and Resource Innovations began in June 2021, with the goal being to leverage DESC's existing and extensive electric DSM portfolio and bring these gas DSM programs to the Commission for approval. Tr. p. 16.5:6–12.

Witness Herndon testified to the role of Resource Innovations in the development process. Tr. p. 28.3:8–17; 28.4:7–12. Witness Herndon explained that his team analyzed DESC's gas customer base, identified potential measures, and then worked with DESC to refine and develop the list of measures into actual program offerings. Tr. p. 28.4:13–28.5:7. As part of the development process, he also evaluated incremental costs, natural gas savings, and estimated useful measure life to determine the cost-effectiveness and potential participation levels in the new programs. Tr. p. 28.5:8–13.

On October 19, 2021, following several months of developmental meetings, DESC presented the proposed new programs to ORS. Tr. p. 16.5:14–18. Shortly thereafter, on October 26, 2021, DESC convened a meeting with the existing DESC Energy Efficiency Advisory Group

to explain the Company's plan for natural gas DSM programs and receive feedback on the proposed programs. Tr. p. 16.5:19–16.6:2.

During the hearing, Witness Shelton explained that DESC was seeking approval of four new gas DSM programs for a 5-year term. Tr. p. 16.7:12–20. She testified that the first program is an expansion of the Company's existing residential EnergyWise store to DESC gas customers. The EnergyWise store is currently available to the Company's electric and combination customers¹ to purchase electric energy efficiency measures. Tr. p. 16.9:19–20; 16.10:8–16.11:8. The new program allows the Company's natural gas and combination customers to purchase gas energy efficiency measures. *Id.* The Company will implement the new program by leveraging the EnergyWise store's existing infrastructure and implementation contractor which, in turn, avoids the expenses associated with setup, testing, and implementation of a wholly new online store. *Id.*

Witness Shelton explained that the second program provides rebates to residential gas service customers who purchase eligible gas furnaces, gas water heaters, gas tankless water heaters, and gas direct vent fireplaces. Tr. p. 16.11:9–19. This program requires purchase of an eligible product and submission of a rebate application to DESC. *Id.* Again, Witness Shelton testified that DESC intends to leverage its existing in-house tracking system, infrastructure, and internal rebate processing team to administer the new program alongside the current electric Heating & Cooling and Water Heating Program. *Id.*

The third program offers this same program to commercial customers. The program provides rebates to small and medium-sized businesses that invest in eligible energy efficient

¹ The term “combination customers” is used herein to describe those DESC customers who purchase both natural gas and electricity from DESC.

natural gas equipment. Tr. p. 16.11:20–16.12:13. As Witness Shelton explained during the hearing, the intent of the two rebate programs is “to offer a complementary ENERGY STAR rebate to [DESC’s] gas customers just like [it] offers to [its] electric customers.” Tr. p. 61:3–13; *see also id.* at 61:14–62:12 (noting it is not “a prudent use of gas customers’ funds to spend gas money to do research and development or to study if it’s cheaper for a customer to switch to gas”).

As explained by Witness Shelton, the fourth program is an expansion of the Neighborhood Energy Efficiency Program (“NEEP”) to income-qualified, gas-only customers. Tr. p. 16.12:14–21. The expansion leverages existing NEEP infrastructure and includes neighborhood door-to-door contact to educate customers on energy efficiency, provide an in-home energy assessment, and include direct installation of low-cost natural gas efficiency measures. *Id.* In rebuttal of Witness Grevatt’s recommendation that the Company conduct additional analysis as part of its implementation of NEEP, Witness Shelton raised three points. Tr. p. 22.3:4–22.6:7. First, she noted that Witness Grevatt’s measures would delay program implementation and create unnecessary complexity, turning a short home visit into a lengthy and more cumbersome endeavor that is disfavored by customers. Tr. p. 22.3:10–22.5:9. Second, she noted that the proposed market analysis would only increase the cost of a program that already does not pass the TRC test. Tr. p. 22.5:10–17. And third, she stated that Witness Grevatt’s proposal may limit customer participation. Tr. p. 22.5:18–22.6:7. Witness Shelton explained that the Company’s intent in expanding NEEP to its gas customers is to leverage the electric program’s existing infrastructure in a way that seamlessly provides gas customers with similar energy-efficient measures and education. *Id.*

Witness Herndon reiterated Witness Shelton’s explanation of the four proposed programs and went on to explain the results of the Company’s cost-benefit analysis. Tr. p. 28.5:14–28.7:4;

28.7:6–28.9:19. He explained that the analysis included three levels: (1) measure-level; (2) program-level; and (3) portfolio-level.² Tr. p. 28.8:7–21. Each level was evaluated using four standard cost-benefit analysis tests consistent with the California Standard Practice Manual: (1) the Utility Cost Test (“UCT”); (2) the Total Resource Cost Test (“TRC”); (3) the Participant Cost Test (“PCT”); and (4) the Ratepayer Impact Measure Test (“RIM”).³ Tr. p. 28.9:1–19. The results are presented as a ratio of benefits to costs, and if benefits are equal to or greater than costs, meaning a ratio of 1.0 or greater, the measure or program passes the test. Tr. p. 28.9:17–19. As presented in Exhibit B to Composite Hearing Exhibit No. 2, each program, except the NEEP program, passed the TRC and UCT tests with benefit/cost ratios greater than 1.0. The overall portfolio, including the NEEP expansion, passes both the TRC and UCT tests with a benefit/cost ratio greater than 1.0. Tr. p. 28.9:20–28.10:4; *see also* Ex. B to Composite Hearing Ex. No. 2.

On cross-examination, Witness Herndon addressed free ridership and spillover concerns raised by CCL/SACE. Tr. p. 45:7–59:7. Witness Herndon agreed that net savings, as opposed to gross savings, accounts for free ridership and spillover. Tr. p. 45:18–48:22. Because the proposed programs are new, however, Witness Herndon noted that gross and net savings are generally considered equivalent. Tr. p. 49:4–12. Moreover, any difference in net to gross would be accounted for as part of the Company’s Evaluation, Measurement and Verification (“EM&V”) process, and therefore, would alleviate any net to gross concerns. He confirmed that the

² The measure-level analysis evaluates the costs and benefits of each measure. The program-level analysis evaluates the costs and benefits of each proposed program. The portfolio-level analysis measures all programs together as a whole.

³ As Witness Herndon explained, each test measures cost-effectiveness from a different perspective. The UCT is cost-effectiveness from the utility’s perspective, the TRC is a societal perspective including both the participant’s costs and the utility’s costs, the PCT is from the customer’s perspective, and the RIM measures the impact on customer bills or rates. Tr. p. 28.9:6–16.

assumption is not necessarily one of zero free ridership because saturation is not determinative on that issue. Tr. p. 47:15–16.

Witness Shelton addressed the NEEP program’s cost-effectiveness. Tr. p. 16.13:1–17. She noted that while the natural gas NEEP program does not pass the TRC or UCT tests standing alone, a gas-specific low-income program is an important part of the Company’s overall DSM offerings. *Id.* Given that the importance of the offering and the fact that the portfolio as a whole passes the TRC test, a program-level failure should not prevent implementation of the program. *Id.* When questioned by this Commission, Witness Shelton also addressed the potential free ridership concerns and explained that spillover and free ridership are typically determined “on the back end, after the program has some participation, through the EM&V process.” Tr. p. 164:8–15.

Finally, Witnesses Shelton and Herndon explained that the four proposed programs will result in annual energy savings ranging from approximately 215,000 therms in program year one to over 340,000 therms in program year five. Tr. p. 16.8:3–8; Hearing Exhibit No. 1. This results in 1.520 million therms saved over the five program years. Witness Shelton testified that the Company intends to market all four programs through bill inserts, online advertising, direct mail, and the DESC website. Tr. p. 16.4:3–7.

2. ORS Testimony

ORS is supportive of DESC’s four proposed gas DSM programs. Witness Morgan testified that ORS studied DSM programs offered by utilities in South Carolina and elsewhere, compared those programs to DESC’s proposed gas DSM programs, and found DESC’s proposed gas DSM programs consistent with other utilities’ offerings. Tr. p. 230.3:21–230.4:7. Witness Morgan further testified that DESC’s forecasted participation, therm savings, and costs are supported by

the information provided by the Company, consistent with industry standards, and reasonable. Tr. p. 230.4:8–230.5:9; Hearing Ex. No. 7 (setting forth ORS review of the proposed programs).

Witness Morgan also reviewed DESC’s cost-effectiveness test results for each program and the overall portfolio and testified that the results were reasonable. Tr. p. 230.7:4–20. Witness Morgan testified that the potential measure savings and associated costs align with therm saving values and methodology used in industry standard reference manuals. *Id.* As to the NEEP program’s failure to pass TRC, UCT, or RIM as a standalone program, Witness Morgan noted that the Commission has customarily approved income-qualified programs that are not cost-effective. Tr. p. 230.7:16–20. As such, Witness Morgan testified that the failure of that program to pass the tests should not prevent program approval and implementation. *Id.*

Finally, Witness Morgan agreed that the proposed programs comply with the requirements of S.C. Code Ann. § 58-37-20 and noted ORS does not object to the Company’s request to make future amendments or modifications to the programs without prior Commission approval. Tr. p. 230.7:21–230.8:25; 230.8:32–230.9:8.

3. DCA Testimony

The DCA did not present testimony related to the development or the specific features of DESC’s proposed gas DSM programs.

4. CCL/SACE Testimony

Witness Grevatt reviewed DESC’s four proposed gas DSM programs and made alternative recommendations to three out of the four programs. Witness Grevatt testified in support of the first program—the EnergyWise store. Witness Grevatt stated it was a “best practice” for a dual-fuel⁴ utility to combine gas and electric options in one store. Tr. p. 185.6:8–20.

⁴ A “dual fuel utility” means a utility that offers both electricity and natural gas to its customers.

As to the second and third programs, the residential and commercial rebate programs, Witness Grevatt argued DESC has not performed research in the existing market share for high efficiency gas equipment. Tr. p. 184.13:20–185.14:5. Witness Grevatt’s concern is that the Company used gross savings instead of net savings to calculate the cost-effectiveness of the two rebate programs. Tr. p. 185.14:14–185.15:15. Additionally, Witness Grevatt is concerned that the promotion of energy efficient gas furnaces “may not be in the best interest of [the] customers” because energy efficient electric heat pumps “conceivably have lower lifetime installation and operating costs” and lower carbon emissions. Tr. p. 185.16:11–14. As to the two rebate programs, Witness Grevatt recommended the Commission deny the programs without prejudice and direct the Company to engage in additional market research. Tr. p. 185.17:20–185.18:13; 185.22:12–185.23:3.

As to NEEP, Witness Grevatt recommended the Commission approve the Company’s proposal with a contingency. Witness Grevatt testified that the Company should conduct further analysis into opportunities to implement NEEP on a dual-fuel basis and then report the results of that analysis to the Commission in 180 days. Tr. p. 185.11:19–185.12:5; 185.22:6–11. Witness Grevatt advocated for more comprehensive dual-fuel saving measures in NEEP, such as insulation and air sealing. Tr. p. 185.7:15–185.8:2. Witness Grevatt could not, however, provide the Commission with the actual anticipated costs to customers for the studies he suggested. Tr. p. 199:23–201:25.

5. Commission Findings & Conclusions: Approval of Gas DSM Programs

Having reviewed the testimony and evidence in the record, the Commission finds DESC’s four proposed gas DSM programs are appropriate and reasonable approaches to implement gas

DSM measures for the first time. The Commission further finds that the four programs are in the public interest, cost-effective, and consistent with S.C. Code Ann. § 58-37-20.

Generally, the programs, as proposed, provide a timely benefit to a group of DESC's customers who previously lacked any DSM measures—DESC's gas customers. They also provide additional benefits to DESC's combination customers, providing them access to rebates on qualified energy efficient appliance purchases to replace existing gas appliances. As noted by Witness Morgan, the four proposed programs are “tried and true” and “produce results.” Tr. p. 242:16–20. Each program is addressed, in turn, below.

DESC's first program in the gas DSM portfolio is an expansion of the EnergyWise store to include additional items that gas customers may purchase to lower their energy usage. No party contests the approval of the measure. Based on the evidence presented, the Commission finds that it is a reasonable and cost-effective energy conservation measure.

DESC's second and third programs are residential and commercial rebate programs tied to the purchase and installation of eligible energy efficient gas appliances. CCL/SACE ask the Commission to reject these programs without prejudice until further market research is conducted. The Commission declines CCL/SACE's request. The evidence presented establishes that the two programs are reasonable and cost-effective. As Witness Herndon explained, the Company believes the programs are “effectively designed,” but because the rebate programs are new programs, the Company “made a rough equivalency of gross and net” and “didn't want to be speculative[.]” Tr. p. 49:16–50:4, 49:8–9. The Commission finds that at the approval stage, the Company's assumptions and calculations of cost-effectiveness are reasonable and supported by the record.

The final program is the NEEP expansion to DESC's gas customers. Again, no party challenges expansion of NEEP. CCL/SACE, however, ask the Commission to delay approval to allow for additional market analysis. When asked about the cost of such additional market analysis, Witness Grevatt's answer shifted from an initial estimate of \$6,000 to potentially \$20,000. Tr. p. 193:15–194:16, 199:24–200:20, 202:9–203:14. Again, Witness Grevatt was unable to quantify the cost of CCL/SACE's requested analysis. Moreover, customers would bear the cost for the analysis. Tr. p. 22.5:10–17; 204:11–16. Thus, the Commission declines CCL/SACE's request.

The evidence in the record establishes that the Company's NEEP expansion was designed as an initial and easy-to-implement program intended to reach as many customers as possible. The record further establishes that there is potential for expansion of the program. The Commission finds no valid basis to delay or deny approval. The Commission finds that the Company has met its burden of establishing the measure's reasonableness as part of a portfolio that is cost-effective.

In accordance with the foregoing conclusions, the Commission approves DESC's four proposed gas DSM programs. Finally, the Commission finds that the flexibility in modifying the programs as requested by the Company will aid the Company in implementing and expanding its new gas DSM programs in an efficient manner. The Commission directs DESC to include information regarding all such modifications in its annual RSA filing.

B. Gas DSM Rider: Cost Recovery

1. DESC Testimony

The Company proposes a natural gas rate rider to recover reasonable and prudent costs incurred to implement and operate the gas DSM programs, including administrative and general

costs and overhead, as well as historical costs and SSI. Tr. p. 40.5:12–14. It will be titled: “Rider to Retail Gas Rates—Demand Side Management Component” (“Gas DSM Rider”).

Witness Smith testified to the Gas DSM Rider’s purpose. Tr. p. 40.2:16–40.3:2. She explained that the proposed Gas DSM Rider allows DESC to recover its program costs related to the gas DSM programs. Tr. p. 40.5:3–9; Hearing Ex. No. 3. Witness Smith explained that the program costs include those reasonable and prudent costs necessarily to implement and operate the gas DSM programs, including administrative and general costs and overhead. Tr. p. 40.5:10–17.

Witness Smith also explained the structure of the Gas DSM Rider as similar to DESC’s electric DSM rate rider approved in 2019. Tr. p. 40.5:18–40.6:4. The Gas DSM Rider utilizes a recovery amortization period of three years for program costs, uses the Company’s weighted average cost of debt⁵ as the carrying cost applied to unrecovered gas DSM balances, and as initially proposed, utilizes a Shared Savings Incentive (“SSI”) of 9.9%. *Id.* The Gas DSM Rider applies only to the Company’s residential and commercial rate classes, however. Tr. p. 40.6:13–19. Witness Smith explained that the Company estimates that the Gas DSM Rider’s bill impact within the range of \$0.15–\$.20 on the monthly bill of the typical residential natural gas customer using 100 therms. Tr. p. 40.11:12–16.

2. ORS Testimony

ORS does not object to the Company’s proposed method of cost recovery because the method proposed is structurally similar to DESC’s electric DSM programs and is consistent with previous Commission orders. Tr. p. 230.5:10–20.

⁵ Witness Smith testified that the Company’s weighted average cost of debt as of December 31, 2021, was 5.62%. Tr. p. 40.8:2–3.

3. *DCA Testimony*

The DCA did not present testimony related to those portions of the Gas DSM Rider that relate to the recovery of costs. The DCA does, however, challenge the SSI. The testimony on that issue is discussed in subsection C, *infra*.

4. *CCL/SACE Testimony*

CCL/SACE did not present testimony related to the cost-recovery portions of the Gas DSM Rider.

5. *Commission Findings & Conclusions: Cost Recovery Through the Gas DSM Rider*

Through its application, DESC seeks approval of a Gas DSM Rider to allow it to recover (1) its actual program costs associated with developing, implementing, and administering its new gas DSM programs and (2) an incentive. *See* S.C. Code Ann. § 58-37-20. As to the program cost portion of the request, no party challenges DESC's statutory right to recovery. The Company proposes a Gas DSM Rider that will establish a gas DSM account in which the Company may defer the gas DSM costs, utilization of a three-year amortization period for recovery of program costs, and application of the Company's weighted average cost of debt to unrecovered gas DSM regulatory asset balances. The Commission finds that DESC has met its burden with respect to the recovery of costs through the Gas DSM Rider.

The Commission further finds it is reasonable, in the public interest, and in accordance with S.C. Code Ann. § 58-37-20 that DESC be allowed to recover its reasonable and prudent costs incurred in implementing, operating, and administering the gas DSM programs as set forth herein.

C. Gas DSM Rider: Incentive

1. DESC Testimony

In addition to cost recovery, DESC seeks to recover an SSI through the Gas DSM Rider. Witness Shelton testified that the Company initially proposed application of 9.9% as the incentive for the proposed gas DSM programs. Tr. p. 16.17:17–16.18:15. According to Witness Shelton, the statutorily required incentive promotes investment in energy efficiency and conservation programs and provides the statutorily required inducement beyond recovery of lost revenues and program costs. Tr. p. 16.17:18–20.

Witness Smith testified that the Company seeks to earn the incentive through the Gas DSM Rider. Tr. p. 40.5:3–9. The incentive, like the program costs, is recovered through the application of a charge per therm that is specifically calculated for residential and commercial customer classes. Tr. p. 40.5:7–9. In her rebuttal testimony, Witness Smith stated that the Company was accepting Witness Morgan’s recommendation to set the SSI at the return on equity (“ROE”). Tr. p. 44.2:5–12. Witness Smith further explained that the ROE will be established in the Company’s upcoming general gas rate case, set to be filed no later than April 1, 2023 (the “2023 Rate Case”). Tr. p. 44.2:13–44.3:16.

Witness Smith further explained the process to implement the SSI to match the ROE. *Id.* She stated that DESC will file its initial gas DSM annual update on July 31, 2023, for the first program year concluding on May 31, 2023 (the “2023 Annual Update”). Tr. p. 44.2:15–44.3:2. In the 2023 Annual Update, DESC will calculate the SSI at 9.9% and then true up the SSI to the ROE set in the 2023 Rate Case. *Id.* The true up would follow in the 2024 Annual Update. On redirect, Witness Smith confirmed that the SSI is recovered in the rider, not as part of the annual RSA proceeding. Tr. p. 172:2–14.

2. ORS Testimony

As outlined above, ORS does not contest the Company's entitlement to an incentive, but it disagrees with the Company's initial proposal to set the SSI at 9.9%. Tr. p. 230.6:5–230.7:3. Witness Morgan proposed an alternative of setting the SSI at the ROE, which the Company accepted. *Id.*; *see also* Tr. p. 44.2:5–12 (DESC accepts Witness Morgan's alternative).

3. DCA Testimony

Witness Dismukes challenged the Company's SSI request and asked the Commission to reject the Company's proposal. Tr. p. 217.2:19–217.3:2. He testified that the proposed Gas DSM Rider, without an SSI, "provides sufficient financial incentives for a utility to pursue DSM." Tr. p. 217.3:6–8.

Witness Dismukes further testified that if the Commission believes an SSI is statutorily mandated, he proposes a performance-based incentive. Tr. p. 217.3:8–21. Witness Dismukes's proposal ties future performance incentives to a percentage of estimated energy savings by the customer. *Id.* The actual savings would be confirmed through future EM&V processes. *Id.*

In addition to arguing for a performance-based incentive, Witness Dismukes challenged the Company's requested SSI percentage of 9.9%. Tr. p. 217.4:1–5. He argued that a rate of 8.14% is consistent with the Company's current overall allowed ROR. *Id.* And in surrebuttal, Witness Dismukes argued the Commission "should not ignore intangible incentives the utility will receive from the pursuit of energy efficiency in the form of enhanced public goodwill and other comparable benefits." Tr. p. 219.1:21–3.

4. CCL/SACE Testimony

CCL/SACE did not present testimony related to SSI.

5. *DESC Rebuttal Testimony*

On rebuttal, Witness Smith confirmed that the Commission cannot “provide” goodwill as an incentive because goodwill is inherent to the Company. *See* S.C. Code Ann. § 58-37-20 (stating the Commission “must[] provide incentives”).

Witness Smith also explained why DESC and ORS support the SSI matching the ROE instead of the rate of return (“ROR”), as Witness Dismukes suggests. She testified that the ROR has both debt and equity components, so it represents the claims on the Company’s assets for both debtholders and equity holders. Tr. p. 138:3–13. The ROE differs in that it represents the earnings and benefits that are available to the Company’s shareholders for their investment in the Company. Tr. p. 137:11–18. Given this difference, Witness Smith testified that the ROE is a better measure for determining the SSI. *Id.*

As to the DCA’s alternative suggestion that the Commission implement performance-based measurements for the incentive, Witness Shelton explained that a performance-based measurement does not account for those instances where there is a very high level of participation in the programs but other factors beyond the Company’s control that impact a customer’s energy savings. Tr. p. 115:5–118:25. A financial incentive, in contrast to a performance-based incentive, serves to incentivize the Company to create the programs that its customers will likely use. Tr. p. 117:9–21; 118:13–25.

6. *Commission Findings & Conclusions: Incentive*

DESC’s proposed Gas DSM Rider includes recovery of an SSI. ORS does not oppose DESC’s right to recover an SSI, and DESC has agreed to ORS’s recommended calculation of the SSI for the gas DSM programs. DCA, in contrast, argues that DESC is appropriately incentivized by the cost recovery mechanisms and public goodwill, such that the requested financial SSI is

unnecessary. As an alternative to rejecting a financial SSI, DCA argues for a performance-based calculation.

The DCA’s position raises two questions for the Commission: (1) can the Commission decline to grant DESC an incentive and (2) if not, what constitutes an appropriate incentive under the statute. Both involve statutory interpretation. To answer the questions, the Commission begins by examining the language of the statute. Section 58-37-20 states that if the Commission adopts procedures encouraging utilities to invest in cost-effective energy efficient technologies and energy conservation programs—as this Commission has done with the approval of DESC’s gas DSM programs—, “these procedures *must*[] provide incentives and cost recovery” S.C. Code Ann. § 58-37-20 (emphasis added).

South Carolina rules of statutory interpretation provide the Commission with its answer to the first question. “The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *CFRE, LLC v. Greenville Cnty. Assessor*, 716 S.E.2d 877, 881 (S.C. 2011) (citing *Sloan v. Hardee*, 640 S.E.2d 457, 459 (S.C. 2007)). In doing so, the Commission “must give the words found in the statute their ‘plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.’” *Id.* (citing *Sloan*, 640 S.E.2d at 459). The Commission must also “read the statute so ‘that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.’” *Id.* (citing *State v. Sweat*, 665 S.E.2d 645, 654 (S.C. Ct. App. 2008)).

“[U]se of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” *Richland Cnty. v. S.C. Dep’t of Rev.*, 811 S.E.2d 758, 767 (S.C. 2018) (citing *Collins v. Doe*, 574 S.E.2d 739, 743 (S.C. 2002)). In this case, the statute says the Commission *must* provide DESC with incentives. “Must,” of course, is no different than “shall”

and conveys a mandatory meaning. “Because the Legislature’s use of mandatory language is unambiguous, [the Commission] has no right to impose another meaning.” *Id.* (citing *Hodges v. Rainey*, 533 S.E.2d 578, 581 (S.C. 2000)). As a result, the Commission concludes that it must provide DESC with an incentive. The Commission, thus, declines the DCA’s argument that the Commission may refuse to grant an incentive to DESC.

But the question remains, what is an appropriate incentive under the statute? Is the requirement of an incentive, satisfied by the Commission’s grant of cost recovery or the mere existence of public goodwill, as the DCA suggests? Again, an examination of the statute’s construction and related case law answers this question in favor of DESC. First, the Commission disposes of the DCA’s suggestion that the Gas DSM Rider, without the SSI, provides sufficient incentives for DESC to invest in the programs.

This Commission, like courts in this state, applies the plain meaning rule in interpreting and applying statutes. Under the rule, it is not this Commission’s “place to change the meaning of a clear and unambiguous statute.” *Hodges*, 533 S.E.2d at 581. And the statute at issue requires the Commission to provide “incentives and cost recovery.” S.C. Code Ann. § 58-37-20 (emphasis added). If the Commission were to adopt the DCA’s position on cost recovery without an SSI, it would be ignoring the statute’s use of “and,” which, as outlined above, it cannot do. *See Jennings v. Jennings*, 736 S.E.2d 242, 247 (S.C. 2012) (noting two subsections are “connected by the conjunctive ‘and’ indicating that they must be read together”) (Toal, J., concurring); *see also State v. Scott*, 571 S.E.2d 700, 702–03 (S.C. 2002) (construing statutory language providing that a sentence “must include any term of incarceration and completion of a community supervision program” and concluding “[t]he use of the word[] ‘must’ along with the conjunction ‘and’” means the sentence “requires a term of incarceration along with the completion of a CSP”). For this

reason, the Commission finds the General Assembly requires an incentive to be something more than the cost recovery already allowed under the terms of the statute.

This brings the Commission to the question of whether public goodwill is a qualifying incentive for purposes of the statute’s mandate. To answer that question, the Commission returns to the plain language of the statute. Section 58-37-20 requires the Commission “provide” “incentives” to DESC for investing in DSM programs. Goodwill is not something the Commission can “provide,” nor does it qualify as an “incentive.” As Witness Smith noted on redirect, goodwill is inherent to the Company. As such, it is not something the Commission can “provide.” Again, only the Company can generate goodwill for itself. *See Omaha v. Omaha Water Co.*, 218 U.S. 180, 202 (1910) (citing *Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 52 (1909) (recognizing that any goodwill of a regulated utility is generally not considered to be a cost of rendering utility service)). Goodwill cannot be an “incentive.” For these reasons, the Commission must decline the DCA’s request to find that intangibles, such as goodwill, qualify as Commission-provided incentives under the statute.

Finally, the Commission declines the DCA’s request for a performance-based financial incentive. A performance-based incentive does not account for outside factors beyond the Company’s control and, if accepted, would penalize the Company twice. Tr. p. 22.9:4–16. This Commission has not implemented performance-based incentives in any other DESC DSM approval proceeding, and it is not inclined to change course here. Having declined a performance-based incentive, the Commission finds that DESC’s and ORS’s agreed-upon calculation of a performance-based financial incentive is reasonable, in the public interest, supported by the record, and fully consistent with S.C. Code Ann. § 58-37-20. The Gas DSM Rider, including the SSI, is approved.

D. Net Lost Revenues

1. DESC Testimony

As Witnesses Shelton and Smith explained, the Company proposes addressing the recovery of net lost revenues through the Company's annual RSA proceeding. Tr. p. 16.8:9–13; 16.18:16–23; 40.5:10–17; 40.6:5–12; 40.9:6–40.10:1–23. Witness Smith testified that the net lost revenues resulting from reduced therm sales are inherently reflected in the billing units and revenues presented in the Company's annual RSA proceeding—an annual proceeding that does not exist for electric utilities to reset base rates. Tr. p. 40.10:12–23. As a result, the Company does not currently propose including recovery of net lost revenues in the Gas DSM Rider.⁶

Witness Smith explained that DESC intends to continue to file an RSA monitoring report pursuant to S.C. Code Ann. §§ 58-5-430 and -440, with each report filed on or before June 15 for the 12-month period ending on March 31, and rates will be effective the first billing cycle in November. Tr. p. 40.9:6–22.

2. ORS Testimony

Witness Morgan testified that ORS does not object to recovery of net lost revenues through DESC's annual RSA proceeding. Tr. p. 230.5:21–230.6:4.

3. DCA Testimony

The DCA did not present any testimony related to the Company's notice of intent to recover net lost revenues in its annual RSA proceeding.

⁶ Witness Smith also testified that DESC may, in the future, seek an adjustment to the Gas DSM Rider to recover net lost revenues resulting from the gas DSM programs. Tr. p. 40.10:1–5.

4. CCL/SACE

Witness Grevatt testified that he supports the “concept” of recovery of net lost revenues through an annual RSA proceeding but noted that under no circumstances should the Company recover lost revenues based on gross savings. Tr. p. 185.18:21–185.19:13.

5. Commission Conclusions: Recovery of Net Lost Revenues in Annual RSA Proceeding

Regarding net lost revenues, no party challenges DESC’s statutory right to recover these amounts. Notably, DESC’s application does not seek recovery of net lost revenues through this proceeding. The Commission recognizes DESC’s notice of intent to recover net lost revenues in its annual RSA filing.

IV. ORDERING PROVISIONS

In accordance with the requirements of S.C. Code Ann. § 58-3-250 and S.C. Code Ann. § 58-37-20, **IT IS THEREFORE ORDERED THAT:**

1. DESC’s application in this proceeding is approved;
2. DESC is authorized to create the four new DSM programs described herein for its residential and commercial natural gas customers;
3. DESC has the authority to modify, expand, amend, or add any additional measure or program to the gas DSM portfolio without having to seek prior Commission approval;
4. DESC may recover the reasonable and prudent costs incurred in creating and implementing the gas DSM programs through the Gas DSM Rider, Hearing Exhibit 3;
5. DESC may recover an SSI set at the ROE to be established in the Company’s 2023 Rate Case. DESC is authorized to calculate the SSI at 9.9% in its 2023 Annual Update and then true up the SSI to the ROE set in the 2023 Rate Case, with the true up following in the 2024 Annual Update;

6. An incentive, such as the financial incentive granted in this case, is consistent with and mandated by S.C. Code Ann. § 58-37-20;

7. The Gas DSM Rider, Hearing Exhibit 3, is approved;

8. DESC's recovery of its net lost revenues is not addressed by this proceeding or the approved Gas DSM Rider but such recovery shall be addressed through the Company's annual RSA proceeding; and

9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

The Honorable Justin T. Williams, Chairman

ATTEST:

Chief Clerk/Executive Director

(SEAL)